

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - INDIANA**

### **Town of Newburgh v. Town of Chandler**

**Court of Appeals of Indiana - December 23, 2013 - N.E.2d - 2013 WL 6795027**

Acting under Indiana Code sections 36-9-2-16, -17, and -18 (1980), the towns of Newburgh and Chandler in Warrick County have for decades been providing sewer services in the four-mile rings outside their boundaries. Their four-mile rings somewhat overlap.

In 2007, both towns adopted ordinances that purported to exercise an exclusive license to furnish sewer service within the overlapping area between Newburgh and Chandler and explicitly prohibiting the other town from providing service.

Ruksam Development, LLC, approached both Newburgh and Chandler about the feasibility and cost of providing sewer services to a subdivision it planned to develop in the overlapping area. Newburgh's estimate was a good deal higher than Chandler's, so Ruksam opted to request sewer services from Chandler. Shortly thereafter, Newburgh sued Ruksam in Vanderburgh Circuit Court for violating the Newburgh ordinance. Chandler then sued Newburgh in Warrick Superior Court, seeking a declaratory judgment that Newburgh's ordinance could not prohibit Chandler from providing new sewer services in the overlapping area.

Newburgh adopted its ordinance asserting exclusive license to provide, and prohibiting others from providing, new sewer services to customers in the overlapping area in April 2007. As Chandler adopted its ordinance six weeks later, Newburgh argued that its ordinance prevails because it was adopted first. The Court of Appeals noted that, "This state's courts have long used a first-in-time rule, in the absence of other legislative direction, to resolve disputes when two municipalities possess concurrent and complete jurisdiction of a subject matter." After a very interesting analysis, the Court of Appeals applied the first-in-time rule, granting summary judgment to Newburgh.